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Attorneys for Defendants  
CARRIAGE CEMETERY SERVICES, INC. and  
BUNKERS MEMORY GARDENS MEMORIAL PARK

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

THE ESTATE OF THEODORE  
KENNEDY; WILLIE WADE, AN  
INDIVIDUAL; CARNELL  
WASHINGTON, AN INDIVIDUAL;  
VIOLA WASHINGTON, AN  
INDIVIDUAL; JAMES KENNEDY, AN  
INDIVIDUAL; AND THEODORE  
KENNEDY, JR., AN INDIVIDUAL,  
Plaintiffs,

vs.

CARRIAGE CEMETERY SERVICES,  
INC., d/b/a BUNKERS MORTUARIES,  
CEMETARIES, & CREMATORY,  
MEMORY GARDENS MEMORIAL  
PARK, DOES 1 through 5, and ROE  
CORPORATIONS 1 through 5,  
Defendants.

Case No. 2:08-CV-01102-KJD-RJJ

**DEFENDANTS' MOTION TO DISMISS  
PURSUANT TO FED. R. CIV. P. 12(B)(1)  
FOR LACK OF SUBJECT MATTER  
JURISDICTION**

**(Oral Argument Requested)**

Defendants Carriage Cemetery Services, Inc. and Bunkers Memory Gardens Mortuary<sup>1</sup>  
(hereinafter collectively "defendants") hereby file this Motion to Dismiss pursuant to Rule  
12(b)(1) of the Federal Rules of Civil Procedure.

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<sup>1</sup> Plaintiffs misidentify this entity in their complaint. Its correct name is Bunkers Memory Gardens Mortuary, not Bunkers Memory Gardens Mortuary and Cemetery as stated in plaintiffs' complaint.

1 This Motion is supported by the accompanying Memorandum of Points and Authorities,  
2 the attached exhibits, and any oral argument that the Court may allow at the hearing on this  
3 matter.

4 DATED this 27<sup>th</sup> day of August 2008

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15 CARRIAGE CEMETERY SERVICES, INC.  
16 and BUNKERS MEMORY GARDENS  
17 MEMORIAL PARK  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Federal courts are courts of limited jurisdiction, and may hear only those cases and claims  
4 which the United States Constitution or federal statute authorizes them to adjudicate. *See*  
5 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Article III of the United  
6 States Constitution requires a federal court to have an actual “case or controversy” before  
7 exercising jurisdiction. *See* U.S. Const., Art. III; *see also* *Golden v. Zwickler*, 394 U.S. 103, 108  
8 (1969). Embodied within Article III’s case or controversy requirement is the standing doctrine,  
9 the absence of which prevents the power of the federal judiciary to be invoked. *See* *Schlesinger*  
10 *v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974). A plaintiff has “standing” if he  
11 or she suffered an actual injury that is causally connected to the defendant’s conduct and which  
12 can be redressed by the courts. *See* *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).  
13 Standing is a prerequisite to subject matter jurisdiction. *See* *Stewart v. Thorpe Holding Co. Profit*  
14 *Sharing Plan*, 207 F.3d 1143, 1148 (9th Cir. 2000).

15 The instant complaint seeks redress for the alleged mistaken cremation of the decedent,  
16 Theodore Kennedy. Plaintiffs are essentially the known surviving relatives. Without  
17 distinguishing which plaintiff is bringing which claims, the lawsuit alleges several causes of  
18 action relating to the cremation and surrounding circumstances. Nevada has yet to address the  
19 rights and causes of action for the mishandling of a corpse. Other jurisdictions have addressed  
20 what rights the decedent’s relatives possess and what duties a mortician or funeral director  
21 undertakes regarding a decedent’s remains. But these rights and duties are confined. As such,  
22 many of the plaintiffs lack standing to bring the claims alleged in the complaint. Rule 12(b)(1) of  
23 the Federal Rules of Civil Procedure thus mandates the dismissal of their claims.

24 **BACKGROUND**

25 **A. Factual Background**

26 In 2007, Theodore Kennedy was suffering from terminal liver cancer. Due to his  
27 anticipated death, the defendants were contacted and the burial and funeral services were  
28

1 prepaid.<sup>2</sup> On December 7, 2007, Theodore Kennedy passed away.<sup>3</sup>

2 Desiring that their brother be buried, the decedent's sisters, Carnell Washington and  
3 Willie Wade, executed the required "Embalming Authorization," "Internment/Entombment  
4 Authorization," and "Acknowledgment of Disclosures/Disclaimer" forms.<sup>4</sup> At the time these  
5 forms were executed, representatives of the defendants allegedly assured the "plaintiffs" that  
6 cremation could not be performed on anyone without the proper authority.<sup>5</sup> At this time,  
7 "plaintiffs" allegedly reiterated to defendants' staff their opposition to the practice of cremation.<sup>6</sup>  
8 As alleged in the complaint, contrary to the plaintiffs' wishes and defendants' assurances,  
9 decedent's corpse was cremated. Due to the cremation and defendants' allegedly insensitive  
10 handling of the situation, all plaintiffs have and will allegedly continue to suffer "physical injury,  
11 shock, outrage, extreme anxiety, worry, mortification, embarrassment, humiliation, distress, grief,  
12 and sorrow."<sup>7</sup>

### 13 **B. Procedural Background**

14 On July 28, 2008, plaintiffs filed the instant complaint. Plaintiffs are: the decedent's  
15 Estate, the decedent's three sisters (Willie Wade, Carnell Washington, and Viola Washington),  
16 the decedent's brother (James Kennedy), and the decedent's son (Theodore Kennedy Jr.).<sup>8</sup> Each  
17 plaintiff alleges the following causes of action: (1) Breach of Contract; (2) Breach of Covenant  
18 of Good Faith and Fair Dealing; (3) Breach of Fiduciary Duty; (4) Negligent Misrepresentation;  
19 (5) Negligence; (6) Negligent Interference with Remains and Intentional Mishandling of Corpse;  
20 (7) Intentional Infliction of Emotional Distress; (8) Negligent Infliction of Emotional Distress;<sup>9</sup>

21 <sup>2</sup> See Check dated October 14, 2007 to Bunker's Eden Vale Mortuary for "Funeral Services  
22 Theodore Kennedy," a copy of which is attached as Exhibit "A."

23 <sup>3</sup> See Burial Permit, a copy of which is attached as Exhibit "B."

24 <sup>4</sup> See Executed "Embalming Authorization" form, a copy of which is attached as Exhibit "C;"  
25 Executed "Internment/Entombment Authorization" form, a copy of which is attached as Exhibit "D;"  
26 Executed "Acknowledgment of Disclosures/Disclaimer" form, a copy of which is attached as Exhibit "E."

27 <sup>5</sup> See Cmpl. ¶ 14.

28 <sup>6</sup> See *id.*

<sup>7</sup> See *id.* ¶ 39.

<sup>8</sup> See Cmpl. ¶¶ 1-5; see also December 15, 2007 Obituary for Theodore Kennedy's Memorial  
Service, a copy of which is attached as Exhibit "F."

<sup>9</sup> While the defendants dispute the underlying merits of plaintiffs' claims for Intentional Infliction  
and Negligent Infliction of Emotion Distress, at this stage of the litigation, the plaintiffs (except for the  
Estate of Theodore Kennedy) arguably have standing to bring them. Accordingly, defendants do not  
substantively address them in this motion.

1 and (9) Unjust Enrichment. Because most of the plaintiffs lack standing to bring these causes of  
 2 action, the Court must dismiss them for lack of subject matter jurisdiction.

### 3 LEGAL STANDARD

#### 4 **A. Rule 12(b)(1) Standards**

5 Dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure is appropriate  
 6 when the court lacks subject matter jurisdiction over a plaintiff's claim. *See* Fed. R. Civ. P.  
 7 12(b)(1). A Rule 12(b)(1) attack on jurisdiction can be either facial, confining the inquiry to  
 8 allegations in the complaint, or factual, permitting the court to look beyond the complaint. *See*  
 9 *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1040 n.2 (9th Cir. 2003); *see also* 2 James  
 10 Wm. Moore et al., *Moore's Federal Practice* ¶ 12.30[4], at 12-38 to 12-41 (3d ed. 1999). Here,  
 11 defendants are bringing a factual attack under Rule 12(b)(1) and thereby dispute the truth of some  
 12 allegations and the significance of others in relation to the plaintiffs' standing and the court's  
 13 ability to therefore exercise subject matter jurisdiction. *See Wolfe v. Strankman*, 392 F.3d 358,  
 14 362 (9th Cir. 2004). In resolving a factual attack, the court need not presume the truthfulness of a  
 15 plaintiff's allegation and may review evidence beyond the complaint without converting the  
 16 motion to dismiss into a motion for summary judgment. *See Safe Air for Everyone v. Meyer*, 373  
 17 F.3d 1035, 1039 (9th Cir. 2004). Because standing pertains to a federal court's subject-matter  
 18 jurisdiction under Article III, it is properly raised in a motion to dismiss under Rule 12(b)(1). *See*  
 19 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

#### 20 **B. Standing**

21 To have standing, a plaintiff must "allege personal injury fairly traceable to the  
 22 defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen*  
 23 *v. Wright*, 468 U.S. 737, 751 (1984). This injury must be distinct and palpable and cannot be  
 24 abstract, conjectural, or merely hypothetical. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975).  
 25 Thus, there must be a causal connection between the conduct of which a plaintiff complains and  
 26 an injury that is capable of redress. *See Lujan*, 504 U.S. at 560-61. Finally, the plaintiff must  
 27 assert his or her own legal rights and interests and cannot rest his or her claim on the legal rights  
 28 or interests of third parties. *See Warth*, 422 U.S. at 499. Because a federal court lacks subject

1 matter jurisdiction over a plaintiff without Article III standing, his claims must be dismissed  
 2 under Rule 12(b)(1). *See, e.g., Cetacean Cmty v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004)  
 3 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998)).

#### 4 ANALYSIS

##### 5 **A. The Estate of Theodore Kennedy**

6 The Estate of Theodore Kennedy lacks standing to bring any of the claims brought in the  
 7 complaint. It is axiomatic that a cause of action does not survive in favor of the estate of the  
 8 decedent unless it accrued in favor of the decedent during his lifetime. *See Myers v. Heritage*  
 9 *Enter., Inc.*, 773 N.E.2d 767, 769 (Ill. App. Ct. 2002); *Price v. Holmes*, 422 P.2d 976, 981 (Kan.  
 10 1967); *Neal v. Neal*, 250 F.2d 885, 890 (10th Cir. 1958). The events upon which the complaint  
 11 bases all of its claims occurred after the death of Theodore Kennedy: the cremation, the  
 12 defendants' alleged breach of its contractual and common law duties, the alleged actions and  
 13 communications of defendant's representatives after discovering the cremation, and the ensuing  
 14 injury and emotional distress (assuming that a decedent can incur such distress after mortality).  
 15 Thus, the contractual and tort claims brought in the complaint failed to accrue during the  
 16 decedent's lifetime. *See, Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440  
 17 (1998) (A breach of contract claim accrues when the facts constituting the breach occur); *Price*,  
 18 422 P.2d at 981 (same); *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d 184,  
 19 185-86 (1988) (negligence causes of action accrue when the facts satisfying the elements of the  
 20 claim occur and damages have been sustained). Because these claims do not survive Theodore  
 21 Kennedy's death, his Estate lacks standing to now bring them. Accordingly, the Court must  
 22 dismiss the Estate for lack of subject matter jurisdiction.

##### 23 **B. Decedent's Sisters Willie Wade and Carnell Washington**

24 Plaintiffs Willie Wade and Carnell Washington are the only plaintiffs argu ably with  
 25 standing to bring the breach of contract claims as parties to the contract. These two sisters are  
 26 also the only two individuals who colorably have standing to bring the negligent representation  
 27 and unjust enrichment claims.

28 ///



1           **1. Contractual Claims**

2           The complaint alleges that the “plaintiffs” entered into a written contract with defendants  
3 to obtain and ensure the burial of the decedent’s remains “in an individual, dignified, respectful,  
4 and lawful manner.”<sup>10</sup> The complaint further alleges that by cremating the decedent’s remains the  
5 defendants have mishandled, abused and desecrated the decedent’s body in breach of the express  
6 contract (first cause of action), of the implied contractual covenant of good faith and fair dealing  
7 (second cause of action), and of the defendants’ implied fiduciary duty (third cause of action).<sup>11</sup>

8           Contrary to the allegations in the complaint, not all of the plaintiffs are parties to the burial  
9 and funeral contract at issue in this case. Only Plaintiffs Willie Wade and Carnell Washington  
10 are parties because they are the ones who executed the forms or agreements upon which claims  
11 for breach of contract or of its implied contractual covenants or duties are based. Willie Wade  
12 executed the “Internment/Entombment Authorization” form.<sup>12</sup> Carnell Washington executed the  
13 “Acknowledgment of Disclosures/Disclaimer,” “Embalming Authorization,” and “Statement of  
14 Funeral Goods and Services Selected” forms as well as signed the check that prepaid for the  
15 burial and funeral services.<sup>13</sup> As the only plaintiffs to have executed the contract, Willie Wade  
16 and Carnell Washington are the only ones who arguably have standing as contractual parties to  
17 sue for the alleged breach. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Fitts*, 120 Nev. 707, 711  
18 n.14, 99 P.3d 1160, 1162 n.14 (2004) (parties to a contract may sue for the breach thereof).  
19 Accordingly, the court lacks subject matter jurisdiction over the remaining plaintiffs’ breach of  
20 contract claims to the extent they sue as a contractual party.

21           **2. Negligent Representation**

22           Under the negligent representation cause of action, the complaint alleges that due to the  
23 “false, incomplete and misleading” statements of defendants’ representatives, “plaintiffs” entered  
24 into funeral and burial agreements regarding the proper burial of the decedent’s remains. The  
25 complaint further alleges that the “plaintiffs” suffered “damages and injury” due to the mistaken

26           <sup>10</sup> Cmpl. ¶ 29.

27           <sup>11</sup> *See id.* ¶¶ 29-31, 38, 43-46.

28           <sup>12</sup> *See* Ex. D.

<sup>13</sup> *See* Ex. A, C, & E; *see also* Executed “Statement of Funeral Goods and Services Selected,” a copy of which is attached as Exhibit “G”.

1 cremation.<sup>14</sup> To prevail on this claim, each plaintiff must establish that defendants, by failing to  
 2 exercise reasonable care or competence in communicating information regarding embalming,  
 3 burial and cremation services, supplied false information upon which that plaintiff justifiably  
 4 relied and by which the plaintiff suffered a pecuniary loss. *See Barmettler v. Reno Air, Inc.*, 114  
 5 Nev. 441, 449, 956 P.2d 1382, 1387 (1998). This tort applies only to business transactions. *See*  
 6 *id.*

7 Although the complaint states this cause of action as to all plaintiffs, again only Plaintiffs  
 8 Willie Wade and Carnell Washington arguably have standing to bring it. As shown previously,  
 9 Ms. Wade and Ms. Washington are the only plaintiffs who relied upon the allegedly false  
 10 information, entered into burial agreements, and suffered a pecuniary loss. Because the  
 11 remaining plaintiffs did not enter into this business transaction, they did not suffer an injury  
 12 causally connected to defendants' alleged misrepresentations. Thus, the remaining plaintiffs do  
 13 not have standing and their negligent representation claims must be dismissed pursuant to Rule  
 14 12(b)(1).

### 15 3. Unjust Enrichment

16 The complaint alleges that defendants are unjustly enriched at "plaintiffs'" expense by  
 17 accepting payments for funeral services they failed to provide.<sup>15</sup> To prevail on this quasi-contract  
 18 claim, a plaintiff must show that he conferred a benefit on the defendant, the defendant  
 19 appreciated the benefit, and the defendant accepted and retained such benefit. *See Topaz Mut.*  
 20 *Co., Inc. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992).

21 The only plaintiffs who arguably could have standing to bring this quasi-contract claim  
 22 are again Willie Wade and Carnell Washington who executed the funeral and burial contract and  
 23 paid for the decedent's funeral services. The amount indicated on the statement of services  
 24 matches the amount of the check signed by Carnell Washington. Only these two plaintiffs have  
 25 standing to pursue an unjust enrichment claim because they are the ones who arguably conferred  
 26 the benefit. The remaining plaintiffs did not enter into a contract nor conferred a pecuniary

27  
 28 <sup>14</sup> See Cmpl. ¶¶ 52-57.

<sup>15</sup> See Cmpl. ¶ 83.



benefit on defendants, and thus lack standing to bring an unjust enrichment claim. Except for Willie Wade and Carnell Washington, the court must dismiss this claim pursuant to Rule 12(b)(1).<sup>16</sup>

**C. Decedent's Son Theodore Kennedy, Jr.**

Plaintiff Theodore Kennedy, Jr. is the only plaintiff with standing to bring the negligence and negligent interference with remains claims. Because of his standing to bring these two claims, he is arguably the only plaintiff to have standing to bring the breach of contract claims as a third-party beneficiary.

**1. Negligence and Negligent Interference with Remains**

Alleging that defendants breach their duty and interfered with the plaintiffs' right to the body by cremating the decedent's remains, the complaint seek liability for negligence and negligent interference with remains.<sup>17</sup> These two claims are at the heart of this case as they deal with the common law rights and duties dealing with the handling and treatment of a decedent's remains. A review of these two causes of action, and the common law rights and duties at issue, illustrates who has standing to bring these claims as well as who possibly has standing to bring a breach of contract claim as a third-party beneficiary.

While a property right in a commercial sense does not exist in a dead body, courts have recognized a quasi-property right in it. *See, e.g., Culpepper v. Pearl Street Building, Inc.*, 877 P.2d 877, 880 (Colo. 1994); *Whitehair v. Highland Memory Gardens, Inc.*, 327 S.E.2d 438, 441 (W.Va. 1985). This quasi-property right includes the right to custody of the body; to receive it in the condition in which it was left; to have the body treated with decent respect; and to bury or otherwise dispose of the body without interference. *See Whitehair*, 327 S.E.2d at 441. This right to possession, custody and control of the decedent's remains is sometimes called the common law

<sup>16</sup> While her sisters arguably have standing to bring the contract, negligent representation and unjust enrichment claims, Plaintiff Viola Washington does not. Viola's only connection to these claims is that her name is one of the names on the check that Willie Wade signed in prepaying the burial and funeral services. Viola did not execute any of the agreements or forms, there is no indication that she relied on defendant's representation or that she suffered a pecuniary loss. Viola's connection to these claims is too tangential to find that she has standing to bring them. Any injury is abstract and hypothetical at this point.

<sup>17</sup> *See* Cmpl. ¶¶ 60-61, 68-69. Because these two claims address the same issue -- the wrongful cremation of the decedent's remains, they will be addressed together.

1 right of sepulcher, the interference of which can lead to tortious liability. *See Galvin v. McGilley*  
2 *Memorial Chapels*, 746 S.W.2d 588, 591 (Mo. Ct. App. 1987)

3 Who can bring a cause of action for interference with the right of sepulcher is limited.  
4 Under the case law, only the surviving spouse, if there is one, or the next of kin of the deceased  
5 has the right to possession of the dead body, and hence standing to bring a claim for tortious  
6 interference with that right. *See, e.g., Whitehair*, 327 S.W.2d at 443-44. The Restatement  
7 (Second) of Torts, likewise, limits a cause of action for interference with the right of sepulcher  
8 “to a member of a family of the deceased who is entitled to the disposition of the body.”  
9 Restatement (Second) of Torts § 868. Nevada, like some states, has superseded the common law  
10 and enacted a statute establishing the order of who has the duty of burial and hence right of  
11 sepulcher. *See* NRS 451.024.

12 Under NRS 451.024, Theodore Kennedy, Jr.’s right to order the burial of his father’s  
13 remains takes priority over any rights his aunts Willie Wade, Carnell Washington, and Viola  
14 Washington and his Uncle James Kennedy may possess. *See* NRS 451.024(1)(a)-(h). Due to his  
15 priority under NRS 451.024, only Theodore Kennedy, Jr. has the right to order the burial of his  
16 father’s remains, thus he alone has standing to bring the negligence and negligent interference  
17 with remains causes of action. *See, e.g., Morton v. Maricopa County*, 177 Ariz. 147, 152, 865  
18 P.2d 808, 813 (Ariz. Ct. App. 1993) (holding that the decedent’s parents and not his siblings had  
19 standing to bring a claim for negligent interference with a dead body because A.R.S. § 36-831  
20 gave decedent’s parents priority over the siblings with regard to the statutory duty of burial).  
21 Because the remaining plaintiffs did not have the statutory right to order the burial of the  
22 decedent, they could not have suffered an actual injury when the defendants alleged interfered  
23 with this right. Without suffering an actual injury, these plaintiffs do not have standing. *See*  
24 *Allen*, 468 U.S. at 751. Except for Plaintiff Theodore Kennedy, Jr., the court lacks subject matter  
25 jurisdiction over the claims for negligence and negligent interference with remains brought by the  
26 other plaintiffs.

27 ///

28 ///

1                   **2. Contract Claims as Third-Party Beneficiary**

2                   As to the three contractual causes of action, the complaint alleges that all the plaintiffs are  
3 the natural and intended beneficiaries of this contract and thus can bring these claims. Contrary  
4 to the allegations, Theodore Kennedy, Jr. is the only plaintiff who colorably has standing to bring  
5 the contractual claims as a third-party beneficiary. *See, e.g., Bemis*, 114 Nev. at 1026, 967 P.2d at  
6 441 (1998). The contract that was allegedly breached was to assist Theodore Kennedy, Jr.'s in  
7 fulfilling his common law and statutory duty and right to possession, custody and burial of his  
8 father's remains. Only he possessed the duty to order the burial of his father under NRS 451.024.  
9 If plaintiffs allege that there was a third-party beneficiary to the contract, Theodore Kennedy, Jr.,  
10 arguably is the only individual to bring a contractual claim in that role. Accordingly, none of the  
11 other plaintiffs (with the possible exception of Willie Wade and Carnell Washington) can bring  
12 the breach of contract causes of action.

13                   **D. Decedent's Brother James Kennedy and Sister Viola Washington**

14                   With the possible exception of the intentional infliction and negligent infliction of  
15 emotional distress claims, James Kennedy and Viola Washington lack standing to bring any of  
16 the claims in the complaint. As explained previously, they cannot bring the breach of contract  
17 claims as well as the negligent representation, unjust enrichment, negligence or negligent  
18 interference with remains causes of action. Although defendants dispute their underlying merits,  
19 the two emotional distress claims are the only ones that James Kennedy and Viola Washington  
20 colorably have standing to bring. As such, their remaining claims must be dismissed for lack of  
21 subject matter jurisdiction.

22                   **CONCLUSION**

23                   The instant complaint is an attempt to shoehorn as many relatives and claims into one  
24 lawsuit due to the alleged mistaken cremation of Theodore Kennedy's remains. While the Court  
25 can exercise subject matter jurisdiction over each claim as to one plaintiff, most plaintiffs lack  
26 standing as to any given cause of action. Arguably, only Theodore Kennedy, Jr., has standing to  
27 bring the negligence and negligent interference with remains causes of action as well as the  
28 breach of contract claims as a third-party beneficiary; only Willie Wade and Carnell Washington

1 have standing to bring the three contractual claims as a contractual party as well as the negligent  
2 representation and unjust enrichment claims. Finally, the Estate lacks standing to bring any of the  
3 listed causes of action in the complaint because these claims failed to accrue during the  
4 decedent's lifetime. For the claims that a plaintiff lacks standing to bring, the Court must dismiss  
5 for lack of subject matter jurisdiction.

6 DATED this 27<sup>th</sup> day of August 2008

SNELL & WILMER L.L.P.

7  
8 By: Chad R. Fears  
9 Kelly A. Evans (NV Bar No. 7691)  
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18 and BUNKERS MEMORY GARDENS  
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**CERTIFICATE OF SERVICE**

Service of the foregoing **MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION** was made via the United States District Court E-Filing System and by U.S. Mail on the 27<sup>th</sup> day of August 2008, to

Natricia C. Tricano, Esq.  
THE TRICANO LAW OFFICE  
601 South 7<sup>th</sup> Street  
Las Vegas, NV 89101

Attorneys for Plaintiffs

  x   Via U.S. Mail  
      Via Overnight Mail  
      Via Hand Delivery  
      Via Facsimile  
      Via E-Mail  
  x   Via ECF – Federal Court

Chad R. Fears

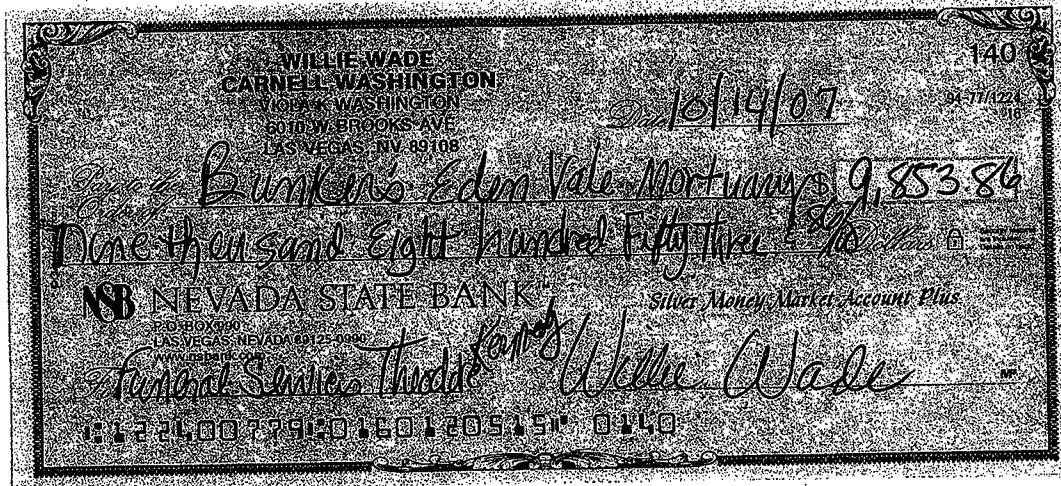
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**Snell & Wilmer**

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# **EXHIBIT A**





# **EXHIBIT B**

# **EXHIBIT B**

COPY

STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS

00000000028421

## BURIAL TRANSIT PERMIT

TYPE OR PRINT IN PERMANENT BLACK INK	PERMIT NUMBER		STATE FILE NUMBER	
	1a. DECEASED-NAME FIRST		1b. MIDDLE	1c. LAST
DECEDENT	Theodore		KENNEDY SR	
	2. DATE OF DEATH (Mo/Day/Year)		3a. COUNTY OF DEATH	
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS	December 07, 2007		Clark	
	3b. CITY, TOWN, OR LOCATION OF DEATH		3c. HOSPITAL OR OTHER INSTITUTION -Name (If not either, give street and number)	
PARENTS	Las Vegas		Nathan Adelson HospiceNW	
	3d. RACE (e.g., White, Black, American Indian) (Specify)		3e. Was Decedent of Hispanic Origin? If yes, specify Mexican, Cuban, Puerto Rican, etc.	
DISPOSITION	Black		Non-hispanic	
	4. SEX		5. AGE-Last birthday (Years)	
TRADE CALL	Male		59	
	6. UNDER 1 YEAR		7. UNDER 1 DAY	
CERTIFIER	MOS		DAYS	
	HOURS		MINS	
REGISTRAR	8. DATE OF BIRTH (Mo/Day/Yr)		9. STATE OF BIRTH (If not U.S.A., name country)	
	September 28, 1948		Mississippi	
CAUSE OF DEATH	10. CITIZEN OF WHAT COUNTRY		11. EDUCATION	
	United States		12	
CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST	13. SOCIAL SECURITY NUMBER		14a. US OCCUPATION (Give Kind of Work Done During Most of Working Life (even if retired))	
	438-72-9910		Time Keeper	
AUTHORITY FOR BURIAL, TRANSPORTATION, REMOVAL, CREMATION OR OTHER DISPOSITION	15a. RESIDENCE - STATE		15b. CITY, TOWN OR LOCATION	
	Nevada		North Las Vegas	
Palm Crematory	15c. STREET AND NUMBER		15d. INSIDE CITY LIMITS (Specify Yes or No)	
	1301 Helen Avenue		Yes	
Signature of person in charge of the cemetery or crematory	16. FATHER - NAME (First Middle Last Suffix)		17. MOTHER - NAME (First Middle Last Suffix)	
	Thornton KENNEDY		Matilda YOUNG	
Date	18a. INFORMANT - NAME (Type or Print)		18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip)	
	Camell WASHINGTON		4101 Birchmont St Las Vegas, Nevada 89130	
Signature of person in charge of the cemetery or crematory	19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify)		19b. CEMETERY OR CREMATORY - NAME	
	Cremation		Palm Crematory	
Signature of person in charge of the cemetery or crematory	19c. LOCATION City or Town State		20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such)	
	Las Vegas Nevada 89101		DAVID JULIUS	
Signature of person in charge of the cemetery or crematory	20b. NAME AND ADDRESS OF FACILITY		20c. SIGNATURE AUTHENTICATED	
	Bunker's Mortuary		777	
Signature of person in charge of the cemetery or crematory	925 N Las Vegas Blvd Las Vegas NV 89101		21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)	
	21b. DATE SIGNED (Mo/Day/Yr)		21c. HOUR OF DEATH	
Signature of person in charge of the cemetery or crematory	December 12, 2007		06:15	
	21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)		21e. PRONOUNCED DEAD (Mo/Day/Yr)	
Signature of person in charge of the cemetery or crematory	Stewart Stein M.D. 3391 North Buffalo Las Vegas, NV 89125		22a. PRONOUNCED DEAD AT (Hour)	
	23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print)		23b. LICENSE NUMBER	
Signature of person in charge of the cemetery or crematory	24a. REGISTRAR (Signature)		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr)	
	Susan Zannus, Director		DEC 12 2007	
Signature of person in charge of the cemetery or crematory	24c. DEATH DUE TO COMMUNICABLE DISEASE		24d. INTERVAL BETWEEN ONSET AND DEATH	
	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		Two Months	
Signature of person in charge of the cemetery or crematory	25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)		25a. DUE TO, OR AS A CONSEQUENCE OF:	
	(a) Liver Cancer		Interval between onset and death	
Signature of person in charge of the cemetery or crematory	(b) Hepatitis C		Interval between onset and death	
	(c) DUE TO, OR AS A CONSEQUENCE OF:		Interval between onset and death	
Signature of person in charge of the cemetery or crematory	PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.		26. AUTOPSY (Specify Yes or No)	
			No	
Signature of person in charge of the cemetery or crematory			27. WAS CASE REFERRED TO CORONER (Specify Yes or No)	
			Yes	

Print Date: 12/12/2007 12:07:44

## AUTHORITY FOR BURIAL, TRANSPORTATION, REMOVAL, CREMATION OR OTHER DISPOSITION

Having complied with all rules and regulations governing the preparation of dead human bodies and upon receiving the signatures of the person who is to certify the cause of death, the funeral director or person acting as funeral director, and the local registrar, permission is granted to dispose of this body. The burial-transit permit must be signed below by the cemetery or crematory authority. Where there is no full time person in charge of the cemetery the funeral director may sign as sexton. Upon completion the permit must be returned to the local registrar where death occurred or to the funeral director.

Palm Crematory

(Name of Cemetery or Crematory)

Signature of person in charge of the cemetery or crematory

Date

BURIAL PERMIT

VRS-Rev-Er



# **EXHIBIT C**

## EMBALMING AUTHORIZATION

### ORAL AUTHORIZATION

*if authorization is oral, complete the following:*

Authorization Received from: \_\_\_\_\_ Relationship to Deceased: \_\_\_\_\_  
Date and Time Received: \_\_\_\_\_ Received by: \_\_\_\_\_

---

### WRITTEN AUTHORIZATION

I hereby ☒ **APPROVE** ☐ **DISAPPROVE** of the embalming of the remains of:

Theodore Kennedy  
Name of Deceased

The undersigned hereby authorizes and requests Bunkers Mortuary including its agents and  
Name of Funeral Home

employees to embalm, care for and prepare for disposition of the body of the deceased named above, in accordance with its customary practices. The undersigned represents that he/she has all the legal authority to take action and agrees to indemnify and hold harmless the above-mentioned funeral home, its affiliates and their agents and employees from any and all liability or claim therefor which may arise as a result of this authorization or any action taken in accordance herewith.

*I further understand that embalming is not required by law.*

[Signature] Sister  
Signature and Relationship to Deceased

12/15/2007  
Date

\_\_\_\_\_  
Signature and Relationship to Deceased

\_\_\_\_\_  
Date

*- completely shared face*

**EXHIBIT D**

**EXHIBIT D**



08/25/2017 01:05 FAX

+ Mortuary

001/001

## INTERMENT/ENTOMBMENT AUTHORIZATION FORM

Date 12-11-07 Contract No. 820655 Interment No. \_\_\_\_\_

No interment/entombment shall be performed without the written authorization by the recorded owner of the space/crypt. This authorization must be executed on the forms provided by the cemetery and in the presence of a duly authorized cemetery representative.

The undersigned authorizes the interment/entombment of the remains of the deceased in the spaces/crypt described below.

Cemetery Name MEMORY GARDENS  
 Decedent Name THEODORE KENNEDY Age 59 Sex M  
 Decedent Address LAS VEGAS, NV.  
 Date of Birth 9-28-1948 Date of Death 12-7-2007 Veteran? NC  
 In the following describe interment space: NORTH ANGELS LOT #115SP#2 Date of Purchase 2007  
 Type of Cemetery Service GRAVE SITE Day SAT Date 12-15-07 Time of Service 12:30  
 Type of Outer Burial Container CONCRETE VAULT Supplier \_\_\_\_\_ Memorial \_\_\_\_\_  
 Funeral Home BUNKERS Director SHANNON Tel. \_\_\_\_\_  
 Place of Service CHURCH Day SAT Date 12-15-07 Time of Service 11:00  
 Remarks FULL SET-UP

The undersigned hereby certify that they are all of the legal custodians of the herein named deceased, having the full legal authority to direct the interment, entombment, or other final disposition of the remains of the deceased, and hereby authorize the above named Cemetery to make disposition of the remains of the deceased as indicated above. The undersigned hereby further certify and represent that they are the owner(s) or authorized representative(s) of the owner(s) of the above described Interment Rights and hereby authorize use of said Interment Rights for the interment, entombment, or other final disposition of the remains of the herein named deceased. Cemetery is hereby authorized to install any outer burial container purchased in connection with this interment in the Interment Rights described herein. The undersigned, jointly and severally, agree to indemnify and hold harmless the Cemetery, its affiliates, and their respective agents, shareholders, officers, directors, and employees from any and all liability, including reasonable attorney's fees, and against any loss, damage, suit, or claim which any of them may sustain in connection with the interment, entombment, or other final disposition authorized hereunder. The undersigned acknowledge that Cemetery will follow the directions of the undersigned in reliance upon the undersigned's representation of authority, without independent inquiry of such authority, and that therefore the foregoing indemnity covers claims by third parties as to superior right or authority for final disposition, including claims of Cemetery's own negligence. If prior to final disposition Cemetery becomes aware of a dispute as to such authority, Cemetery is authorized to suspend arrangements pending resolution of such dispute, and the undersigned authorize Cemetery to apply to a court of competent jurisdiction, at the undersigned's cost, for an order directing final disposition. Further the undersigned agree that Cemetery shall have the right to correct any error in this interment, at its own expense, without any liability for such error.

Signature Willie Wade Sister  
 Interment Right Owner Relationship to Deceased  
 Print Name Willie WADE 658-9243  
 Title First Name MI Last Name Jr./Sr./... Tel. No  
 Address 6010 W. BROCKS AVE. LAS VEGAS, NV 89108  
 Street City State Zip  
 Signature \_\_\_\_\_  
 Interment Right Owner Relationship to Deceased Tel. No  
 Print Name \_\_\_\_\_  
 Title First Name MI Last Name  
 Address \_\_\_\_\_  
 Street City State Zip

OFFICE USE ONLY			
Family Service Counselor	Family Verification	Date	<u>12/11/07</u>
Superintendents Verification	Blind Check By		
Recorded By	Interment Record Book		
Lot Book	Lot Card	Map	

**EXHIBIT E**

**EXHIBIT E**



925 LAS VEGAS BOULEVARD NO.  
LAS VEGAS, NV 89101  
OFFICE (702) 385-1441 • FAX (702) 388-7307

### **ACKNOWLEDGMENT OF DISCLOSURES/DISCLAIMER**

Name of the Deceased:

Theodore Kennedy

Date of Death:

12/7/07

Date of Funeral and/or Final Disposition of Body:

12/15/2007

The Federal Trade Commission Trade Regulation Rule for "Funeral Industry Practices" requires certain disclosures and prohibits misrepresentations. This Acknowledgment of Disclosures/Disclaimer form is a check list we ask those we serve to read and sign during the arrangements for the funeral of (the "Deceased") our funeral firm did or did not do the following:

*I/We who made the arrangements for the funeral and final disposition of the remains of the Deceased, do hereby attest to the following*

1. I/We were given a General Price List effective on 10/1/07 prior to discussing prices, services or merchandise.
2. I/We were shown (or given where required by state law) a Casket Price List effective on 10/1/07 prior to discussing prices or caskets.
3. I/We were shown (or given where required by state law) an Outer Burial Container Price List effective on 10/1/07 prior to discussing prices or outer burial containers.
4. I/We were not told that embalming is required by state law (except for certain special cases) and were told that the law does not require embalming except in certain special cases, if embalming was provided, it was done with my/our approval.
5. I/We were not told that any law requires embalming for direct cremations, immediate burial, a funeral using a sealed casket, or if refrigeration is available, the funeral is without viewing or visitation and with closed casket.
6. I/We were not told that any law requires a casket for direct cremation or that a casket (other than an unfinished wood box) is required for direct cremation.
7. I/We were told that state law does not require the purchase of an outer burial container or any of the funeral goods or services. I/We selected except as set forth on the Statement of Funeral Goods and Services Selected.
8. No claims were made to me/us as to the merchandise or other offerings of this funeral firm (embalming, caskets, outer burial container) to the effect that embalming or the use of any merchandise available from this funeral firm would delay the decomposition of the remains for long term or indefinite time, or that any such merchandise would protect the body from gravesite substance if such was not the case. No representations or warranties were made to us about the protective features of caskets or outer burial containers other than those made by the manufacturer. The only warranties, expressed or implied, granted in connection with goods sold with the funeral service we arranged were the expressed written warranties, if any, extended by the manufacturers of such goods. No other warranties were extended to us.
9. I/We were not told that the amount of each of the cash advance items was the cost to funeral firm except where such was the case. I/We were told that the funeral firm's cost may be different based on volume or cash discounts or other professional/trade customs where permitted by state or local law.

Signed this

10

day of

December, 2007

WITNESSED:

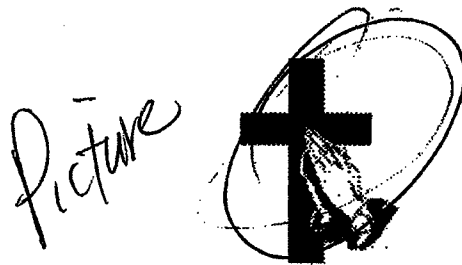
Signature of Funeral Home Representative

Signature of Funeral Buyer

Relationship to Deceased

# **EXHIBIT F**

In Loving Memory  
of  
**Theodore "Ray" Kennedy**



**Sunrise**  
September 28, 1948

**Sunset**  
December 7, 2007

**Services**

Saturday, December 15, 2007  
11:00 a.m.

Pilgrim Rest Missionary Baptist Church  
1240 West Adams Street  
Las Vegas, Nevada 89106

Rev. McKinley Hardmon, Pastor  
Officiating

**Interment**  
Bunkers Memory Gardens Cemetery

*William M. Wallace*  
*658-9243 (H)*  
*274-2451 (C)*

### **OBITUARY**

Theodore "Ray" Kennedy was born on September 28, 1948, in Natchez, Mississippi, to the late Thornton Kennedy and Matilda Young Kennedy. He attended elementary and junior high school at Concordia Parish Training School in Vidalia, Louisiana. He relocated to Las Vegas, Nevada, with his parents in 1965 where he attended and graduated from Rancho High School in 1968.

After graduating from high school, Ray worked for a number of years at the Nevada Test Site for Reynolds Electrical & Engineering Company as a construction clerk. He also worked in the hotel industry before working as a maintenance/handy man and lawn caretaker, which is what he loved doing. He loved the outdoors and working on his lawn equipment.

Ray was well known in every neighborhood he lived in. His personality drew people to him and everybody loved him.

He leaves to mourn and cherish his memory his son, Theodore (Ted) Kennedy, Jr., and grandson, Jaccarri Kennedy, both of Natchez, Mississippi; one brother, James Kennedy (Bobbie) of Vidalia, Louisiana; three sisters, Carnell Washington, Viola Washington (Frank) and Willie M. Wade (James) all of Las Vegas, Nevada; and a host of nieces, nephews, cousins and friends. His father, mother, brother (Roosevelt), and ex-wife (Glenda), preceded him in death.

**"To every thing there is a season,  
and a time to every purpose under the heaven:  
a time to be born,  
and a time to die;  
a time to plant;  
and a time to pluck up that which is planted;"**

**Ecclesiastes 3:1-2**



# **EXHIBIT G**

[illegible]